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May 31, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: MM Docket No. 01-54
RM-9918
Nampa, Idaho

Dear Ms. Salas:

Transmitted herewith, on behalf of State Board of Education, State of Idaho, are an original and four copies of its "Comments in Response to Reply Comments of Idaho Independent Television, Inc." in the above-referenced proceeding, which proposes the substitution of DTV Channel 13 for DTV Channel 44 at Nampa, Idaho.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,



Anne Goodwin Crump
Counsel for
State Board of Education, State of Idaho

Enclosures

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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
)
Amendment of Section 73.622(b))
Table of Allotments,)
Digital Television Broadcast Stations.)
(Nampa, Idaho))

MM Docket 01-54
RM-9918

RECEIVED

MAY 31 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Directed to: Chief, Video Services Division

COMMENTS IN RESPONSE TO
REPLY COMMENTS OF IDAHO INDEPENDENT TELEVISION, INC.

State Board of Education, State of Idaho ("State of Idaho"), licensee of noncommercial educational station KIPT(TV), Twin Falls, Idaho, by its attorneys, hereby respectfully submits its Comments in Response to the Reply Comments of Idaho Independent Television, Inc. ("IIT"), filed May 1, 2001, in the above-referenced proceeding with regard to the proposed change in DTV allotments set forth in the Commission's *Notice of Proposed Rule Making*, DA 01-425, released February 23, 2001 ("*NPRM*"). With respect thereto, the following is stated:

1. State of Idaho recognizes that the normally expected pleading cycle in the above-captioned proceeding closed with the submission of IIT's Reply Comments. Nonetheless, a response is necessary in order to correct a misstatement of applicable Commission policy set forth in IIT's Reply Comments. Accordingly, to the extent deemed necessary, State of Idaho hereby respectfully requests leave to submit the following Comments in Response and that the Commission accept and consider such Comments in Response.

2. In the *NPRM*, the Commission has proposed, at the request of IIT, licensee of

KTRV(TV), Nampa, Idaho, to change the DTV channel associated with KTRV(TV) from Channel 44 to Channel 13. In its Comments in this proceeding, however, State of Idaho submitted an Engineering Statement which graphically demonstrated the substantial interference impact which the proposed substitution would have upon reception of noncommercial educational station KIPT(TV), Twin Falls, Idaho, which operates on NTSC Channel *13 and is licensed to State of Idaho. The Engineering Statement further showed that the proposed channel substitution does not, in fact, meet the two percent requirement for *de minimis* impact. Even more importantly, the Engineering Statement further demonstrated that the proposed channel change would result in the creation of television “gray area,” with a number of persons losing their second primary television service and their only primary noncommercial television service.

3. In its Reply Comments, IIT again claims that its proposal would create less than a two percent increase in interference to KIPT(TV) and further argues that State of Idaho’s demonstration that television “gray area” would be created is irrelevant.¹ Specifically, IIT states that the Commission’s two percent standard “provides a bright line rule whereby any interference below the threshold of two percent of the population of a station’s service area will be considered *de minimis*.” Reply Comments at 4. This statement, however, is not an entirely accurate description of the Commission’s policy, as a key element is missing.

4. Contrary to IIT’s claims, the Commission has determined that it will consider overall loss of service in conjunction with the two percent interference standard. While the Commission

¹ State of Idaho continues to support the accuracy of the Engineering Statement which it has provided and to dispute the claims of IIT that its proposal would create less than two percent new interference. Nonetheless, this point is not directly relevant to the legal error in question in these Comments in Response, and State of Idaho therefore will not re-argue points already set forth in its Comments.

instituted a policy which allows stations to make changes which would result in not more than a two percent increase in interference, that policy is coupled with the proviso that “no new interference may be caused to any station that already experiences interference to 10 percent or more of its population or that would result in a station receiving interference in excess of 10 percent of its population.” *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418, 7451 (1998). While this proviso does not appear to be directly applicable in this instance, it is important here in that it demonstrates that the Commission does look beyond the two percent threshold to consider the bigger picture. A finding that a particular proposal may meet the *de minimis* threshold is not the end of the inquiry, but rather the Commission looks at the overall impact of interference on a television station’s ability to reach its audience.

5. The Commission has not previously addressed in its DTV proceedings the question of how it should treat a proposal to change a DTV facility which would result in the loss of second television reception service. Clearly, the loss of one of only two television stations which a viewer can receive is an issue of a different order of magnitude than one involving interference to one of many signals. Furthermore, in the rural area at issue in this proceeding, there are few available substitutes for over-the-air broadcast reception. While the Commission has considered the issue of loss of service generally, it has not specifically focused on how to treat a DTV proposal which would cause television “gray area.”

6. In examining this question, it must be remembered that the Commission is bound by Section 307(b) of the Communications Act of 1934, as amended, which requires that the Commission “provide a fair, efficient, and equitable distribution of radio service....” 47 U.S.C.

§307(b). Obviously, a proposal which would deprive viewers of only their second primary television service is squarely in conflict with that requirement. Moreover, the Commission does not have the discretion to waive the provisions of the Communications Act. The Commission's public interest obligations preclude the approval of a proposal which would deprive viewers of any choice in programming. The public interest cannot favor relegating viewers to receiving only a single television station merely to serve the convenience of a commercial television licensee.

7. Accordingly, in light of the fact that the proposed substitution of DTV Channel 13 for DTV Channel 44 not only fails to meet the two percent *de minimis* interference standard set forth in the Commission's Rules but also would cause the loss of second primary television service to persons within the KIPT(TV) Grade B contour, the proposal must be rejected. The balance of public interest factors clearly favors retention of the current DTV channel at Nampa rather than substitution of Channel 13.

WHEREFORE, the premises considered, State of Idaho respectfully requests that the proposed substitution of DTV Channel 13 for DTV Channel 44 at Nampa be denied.

Respectfully submitted,

STATE BOARD OF EDUCATION,
STATE OF IDAHO

By:


Anne Goodwin Crump

Its Attorney

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May 31, 2001

CERTIFICATE OF SERVICE

I, Pamela J. Parks, hereby certify that a true and accurate copy of the foregoing
“Comments In Response To Reply Comments Of Idaho Independent Television, Inc.” was served
by first-class mail, postage pre-paid, this 31st day of May, 2001 to

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